

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	NO. A-11-CR-083-SS
	§	
KURT BRANHAM BARTON	§	

**DEFENDANT'S MOTION IN LIMINE**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes KURT BRANHAM BARTON, defendant in the above entitled and numbered cause, by and through his attorneys of record and respectfully moves the Court to order the attorney for the United States Government and all witnesses in this cause to refrain from mentioning, suggesting or alluding to in any fashion, including but not limited to voir dire of any prospective jurors, opening statement, questions, answers, statements, objections, or side bar remark, the following matters without approaching the bench.

I.

**STATEMENTS OF THE DEFENDANT**

Defendant respectfully request that the court order the United States Attorney not to mention, refer to, or attempt to elicit in any manner, any statement of Defendant in the trial of this cause in the presence of the jury until a hearing has been held outside the presence of the jury to determine the following:

1. Whether the statement is inadmissible;
2. Whether the prejudice resulting from the admission of the statement substantially

outweighs the probative value thereof.

WHEREFORE, PREMISES CONSIDERED, it is respectfully requested that the court order the United States Attorney not to mention, refer to or attempt to elicit in any manner, any statement of Defendant in the presence of the jury until a hearing has been held outside the presence of the jury and before the court to determine the relevant factors regarding any statement of defendant as set forth above.

\_\_\_\_ AGREED

\_\_\_\_ GRANTED

\_\_\_\_ DENIED

II.

**EXTRANEOUS UNADJUDICATED OFFENSES**

Defendant respectfully requests that the court order the United States Attorney not to mention, refer to, or attempt to elicit in any manner, any evidence of any alleged unadjudicated extraneous crimes, offenses, bad acts, or violations of the law by Defendant in the trial of this cause in the presence of the jury until a hearing has been held outside the presence of the jury to determine the following:

1. Whether the alleged extraneous offense has relevance apart from character;
2. Whether the alleged extraneous offense occurred at a time so remote as to have no relevancy in the instant case.
3. Whether Defendant is the same person as is the perpetrator of the alleged extraneous offense.
4. Whether the alleged extraneous offense is admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

5. Whether the prejudicial effect of the admission of the alleged extraneous offense substantially outweighs the probative value thereof.

WHEREFORE, PREMISES CONSIDERED, it is respectfully requested that the Court order the United States Attorney not to mention, refer to, or attempt to elicit in any manner, any evidence of alleged extraneous offenses in the presence of the jury until a hearing has been held outside the presence of the jury and before the court to determine the relevant factors regarding alleged extraneous offenses of the Defendant as set forth above.

\_\_\_\_ AGREED                      \_\_\_\_\_ GRANTED                      \_\_\_\_\_ DENIED

III.

**REPORTS OR STATEMENTS OF GOVERNMENT WITNESSES**

Defendant respectfully requests that the court order the United States Attorney not to mention , refer to, or attempt to elicit in any manner or otherwise use before the jury, any written report or statement of any Government witness, not to suggest in any manner that such document ought to be offered in evidence by either party, until a hearing has been held outside the presence of the jury to determine the admissibility thereof. For cause, Defendant would show that an offer of such documents by the attorney for the Government would substantially prejudice the rights of the Defendant. Defendant desires to obviate the need to object in the presence of the jury to such offer.

Defendant further requests that the court instruct the United States Attorney not to allude to, make any mention of, refer to, argue, or interrogate about, any statement made by any witness not present to testify or be confronted or cross-examined, to the venire or to the jury or within the hearing and presence thereof, until such time a hearing has been conducted out of the hearing of

the jury to determine the admissibility of any such testimony.

Defendant additionally requests that the court instruct the United States Attorney not to elude to, make any mention of, refer to, argue, interrogate about, either directly or indirectly, in any manner, by statement or opinion, at any time, to any witness, to the venire or to the jury or within the hearing and presence thereof, testimony of any witness relating to “reputation testimony” of the accused, if such “reputation testimony” has in fact been put in issue, without first allowing the Defendant’s attorneys outside the presence of the jury, an opportunity to question said witness to ascertain if he or she is qualified to testify.

WHEREFORE, PREMISES CONSIDERED, the prosecutor should be instructed to approach the bench outside the presence of the jury to request a hearing on the admissibility of any such document or testimony.

\_\_\_\_ AGREED

\_\_\_\_ GRANTED

\_\_\_\_ DENIED

IV.

**STIPULATE TO TESTIMONY**

Defendant respectfully requests that the court order the United States Attorney not request the Defendant or his attorney stipulate any testimony before the jury, whether it be the qualification of an expert or otherwise, as such could only serve to prejudice the Defendant before the jury, if Defendant or his attorney refuses to stipulate as requested, thus allowing prejudicial error to get before the jury which no subsequent instruction can cure.

WHEREFORE, PREMISES CONSIDERED, the prosecutor should be instructed to approach the bench outside the presence of the jury to request a hearing on any such request.

\_\_\_\_AGREED

\_\_\_\_GRANTED

\_\_\_\_DENIED

V.

**PROSECUTOR STATEMENTS**

The Defendant respectfully requests that the United States Attorney be instructed not to make the following statement or implications, either directly or indirectly, whether during opening statement, opening argument, or jury selection or otherwise:

1. That the United States Attorney or any member of his staff speaks for the citizens of the United States of America or the local community;
2. That the citizens of the United States demand a conviction;
3. Any reference to public opinion if the Defendant were to be acquitted;
4. Any reference as to punishment during the guilt-innocence state of the trial;
5. Any expression relating to the prosecutor's personal belief that the Defendant is guilty of the offense with which he has been charged;
6. Any reference to any type of failure of Defendant to testify if the election not to testify is in fact made;
7. Any expression of any law that is not included in the court's charge to the jury;
8. Any reference or insinuation that if Defendant was not guilty of the allegations in the indictment, he could call witnesses to his defense as such argument would violate Defendant's presumption of innocence and confuse the jury regarding the Government's burden of proof.

WHEREFORE, PREMSIES CONSIDERED, Defendant respectfully requests that the court order the United States Attorney not to make any of the foregoing statements in the presence of the jury.

           AGREED                                 GRANTED                                 DENIED

## VI.

**REFERRING TO DEFENDANT**

The Defendant respectfully requests that the United States Attorney be instructed not to engage in any name-calling of the Defendant, but rather refer to him only by his surname . For cause, Defendant would show that the use of any other name could only be for the purpose of attaching derogatory and satirically unflattering labels to the Defendant and same would be prejudicial and likely to create bias against the Defendant before the jury which would prevent him from obtaining a fair trial in violation of the Fifth and Fourteenth Amendments to the United States Constitution, Article I, §§10, 19 of the Texas Constitution, and Articles 1.04 and 1.05 of the Texas Code of Criminal Procedure.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the Court order the United States Attorney refer to the Defendant only by his surname.

AGREED GRANTED DENIED

## VII.

## OPINIONS REGARDING MENTAL ILLNESS

The Defendant respectfully requests that the United States Attorney be instructed not to solicit any opinion or speculation from any witness about whether Mr. Barton would be diagnosed with or has a mental health disorder or mental illness. This evidence is not relevant to

determine guilt or innocence in this matter.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the Court order the United States Attorney accordingly.

\_\_\_\_AGREED

\_\_\_\_GRANTED

\_\_\_\_DENIED

Respectfully submitted,

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By: /s/David Gonzalez  
David Gonzalez  
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ATTORNEYS FOR  
KURT BRANHAM BARTON

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of August, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Mark Lane  
Assistant United States Attorney  
816 Congress, Suite 1000  
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Ms. Jennifer Freel  
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/s/ Rip Collins  
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